

§ 203.4

46 CFR Ch. II (10–1–99 Edition)

specify the basis upon which such person asserts a right to intervene and shall set forth with particularity:

(1) The number and type of U.S.-flag vessels currently operated by the person seeking intervention in the trade or trade route to which the application pertains.

(2) The frequency of sailings of vessels operated by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(3) The specific ports of call conducted by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(4) The average annual carriage by such person for the past 36 months on the trade route to which the application pertains.

(5) If applicable, specific information detailing firm and definite plans for the inauguration of a new service, including, as appropriate, but not limited to, approval by the board of directors or general partners, membership in applicable conference agreements, office openings or the retention of agents in the proposed service area, acquisition of vessels and related equipment, subsidy applications, applications for any needed Government approvals or advertisement for the proposed service.

(6) Such other information as the person believes should be considered in a determination of such person's right to intervene.

(c) *Answer.* (1) The answer shall be simultaneously filed with the petition for leave to intervene and shall specify the basis upon which such person asserts the application should be denied or granted subject to modifications.

(2) The answer shall set forth with particularity:

(i) The ground upon which opposition is based;

(ii) The factual matters which such person believes must be determined by the Administration;

(iii) The legal matters which such person believes must be determined by the Administration;

(iv) For each factual and legal matter raised such person's position and basis therefor; and

(v) The precise nexus between each factual and legal matter raised and the decision of the Administration.

(d) *Right to intervene in Opposition to applications.* (1) Leave to intervene in opposition to applications under section 605(c) of the Act will only be granted to operators of U.S.-flag vessels, and only to the extent, as demonstrated by the petition for leave to intervene, that such person provides an existing service, or that such person has firm and definite plans to provide a service, by a showing that its vessels operate in the same trade or on the same trade route as that proposed by the applicant and so operate in a manner competitive with the specific service proposed by the applicant. Although persons seeking intervention need not call at the same specific ports proposed by the applicant by direct vessel calls, any filing based on intermodal service in opposition to an application shall demonstrate that such person regularly competes by intermodal service for cargo moving to or from ports in the service proposed by the applicant. The burden of demonstrating competition between the vessels of the person seeking intervention and those of the applicant will be with the person seeking such intervention. Leave to intervene will not be granted to those conducting a competing service on an intermittent or *de minimis* basis.

(2) Leave to intervene in opposition to applications under section 805(a) of the Act will be granted, as provided in the statute, to every person, firm, or corporation "having any interest" in such application.

§ 203.4 Replies.

Within ten (10) days after the date for filing answers, the applicant may file a reply specifically addressed to the issues raised in the answers and to oppose the grant to any petitioner of leave to intervene.

§ 203.5 Types of hearings.

(a) *Oral Evidentiary Hearing:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the

proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, and that the case is anticipated to involve the submission of extensive evidence, or the Administration determines that it is otherwise appropriate, the Administration may issue an order referring the case to an Administrative Law Judge for oral evidentiary hearing. Such hearing shall be conducted in accordance with the procedures set out in 46 CFR part 201. The Administration may resolve issues of intervention in such order or refer such issues to the Administrative Law Judge. The burden of establishing that there is a disputed issue of material fact is upon the party seeking the oral evidentiary hearing.

(b) *Hearing on Submission of Written Evidence and Argument:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding involves a disputed issue of material fact which cannot be resolved on the basis of available information of record, but which is not anticipated to involve the submission of extensive evidence, the Administration may fulfill the hearing requirement in sections 605(c) and 805(a) of the Act by rendering a decision solely on the merits of papers submitted, provided that a full and true disclosure of the facts is made and such procedure is fair to all parties. The Administration may, in its discretion, direct the submission of briefs on legal issues together with evidence in written form, and/or the holding of oral argument before the Administration prior to issuing its final decision on the proceeding.

(c) *Show Cause Proceeding:* If, upon review of the application, answers, petitions to intervene and replies, the Administration determines that the proceeding does not or is not likely to involve a disputed issue of material fact or that if such facts exist they can be resolved on the basis of available information subject to official notice, and if the case is not anticipated to involve the submission of extensive evidence, the Administration may determine to handle the matter by show-cause proceeding. In that event, it will issue a decision setting out its tentative conclusions on all of the matters of fact

and law at issue in the proceeding. A Notice summarizing such decision shall be published in the FEDERAL REGISTER in accordance with 46 CFR 201.72. Interested persons may file comments, including support or rebuttal for any matter officially noticed, within 30 days of the date of service of the tentative decision and responses to such comments shall be filed within ten days thereafter unless a shorter or longer period is provided by the Administration for such comments and answers.

§ 203.6 Oral evidentiary hearing before one or more members.

If an oral evidentiary hearing is to be conducted, the Maritime Administration, or the Maritime Subsidy Board or one or more of its members, may conduct such hearing. A member who is not present at the hearing may participate in the consideration and the decision of the case where the oral evidentiary hearing, if held, has been stenographically recorded in full and transcribed for the member's review.

PART 204—CLAIMS AGAINST THE MARITIME ADMINISTRATION UNDER THE FEDERAL TORT CLAIMS ACT

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AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a) (2) and (3).

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§ 204.1 Scope and procedure for filing claims.

This part prescribes the requirements and procedure for administrative settlement of claims against the United States, involving the Maritime Administration, under the Federal Tort Claims Act, based on death, personal